

Opinion No. 68-61

June 13, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Honorable Caswell S. Neal District Judge Fifth Judicial District Carlsbad, New Mexico 88220

QUESTION

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May the items enumerated below be properly included in the Court Fund Budget to be paid from the Court Fund:

1. Pro rata cost of janitor service, utility service, lighting and heating of equipment and Court facilities.
2. Cost of Transcripts of preliminary examinations when the defendant is bound over to the District Court and the Transcript is filed with the District Court.
3. Cost of insurance on Court Library, facilities of the Courtroom and District Court Clerk's office.
4. Workman's Compensation for Court Employees.

CONCLUSIONS

1. Yes.
2. Yes.
3. Yes.
4. See Analysis.

OPINION

*{*100}* **ANALYSIS**

Section 16-3-22, N.M.S.A. 1953, Compilation governs disbursements of the Court Fund and it states as follows:

"For the purpose of maintaining the district courts in the several counties of this state, there shall be levied by the county commissioners of each county in every year, a tax

not to exceed one [1] mill upon each dollar of taxable property, sufficient to provide a court fund in such amount as may be determined and fixed by the district court and state tax commission as herein provided; that on or before the first day of May of each year the district judge of each judicial district in the state shall make an estimate of revenue required for the ensuing year in each county of his district for court purposes, including salaries and expenses chargeable against the court fund as provided by law and shall certify the same to the state tax commission. The state tax commission shall forthwith determine the amount of revenue required for such purpose and shall certify to the board of county commissioners in each county the estimate for such county, and such estimate, when so made and certified, shall not be altered or changed except upon order of the state tax commission. Said tax shall be collected and shall be known as the Court Fund; when collected it shall be turned over to the county treasurer, to be by him disbursed for the payment of the expenses of the district court in his county only as provided by law or upon a certificate of the clerk of the district court of the district in which his county is situated, that an allowance has been made by said court, and no court shall authorize the issuance of any certificate on any account whatsoever unless there shall be at the time money in the county treasury to meet and pay such certificate, and said clerk shall immediately after the close of any term of court, transmit to said treasurer a certified list of all allowances made by said court at such term, and any such treasurer who shall disburse any of the money provided for in this section except as provided by law or as herein provided shall be deemed guilty of a felony, and upon conviction thereof shall be confined in the state penitentiary not less than two [2] years nor more than ten [10] years."

The disbursements from the Court Fund as controlled by the above statute have been the subject of many Attorney General opinions beginning with an opinion published on September 9, 1909. The opinion of this office concerning *{*101}* control of the Court Fund by the court was aptly summarized in Attorney General Opinion No. 66-14 (published January 31, 1966):

". . . we have been of the opinion and followed the rule that a district court has a wide discretion in the use of its district court fund and that the court may use this fund for any purpose connected with the administration of justice. As noted in Attorney General Opinion No. 3383, the court fund is under the absolute control of the court. This remains true today."

The only limit put on a court in making disbursements from the Court Fund is that the disbursement must be for the 'administration of justice". The determination of what is meant by "administration of justice" is within the discretion of the court. The standard was stated in Attorney General Opinion No. 1806 (published October 29, 1937):

"In the exercise of this discretion many items not otherwise provided for by law, but which become necessary in the administration of justice, may be paid out of the court fund, if in the discretion of the court they are expenses of the district court and should be so paid."

Following this long standing rule, it is the opinion of this office today that Items Nos. 1 through 3 may be properly included in the Court Fund Budget.

Item No. 4 concerning Workmen's Compensation for court employees presents a different problem. It is the opinion of this office that unless the employee is engaged in "extra-hazardous occupations or pursuits" the state agency, institution or commission is not required to carry Workmen's Compensation Insurance, although it may elect to be bound by the provisions of Workmen's Compensation Act (see N.M.S.A., § 59-10-1 through § 59-10-3) and provide Workmen's Compensation Insurance. (Attorney General Opinion No. 66-76.) (See also Attorney General Opinion No. 67-131.)

Section 59-10-10 lists occupations considered as "extra-hazardous." Its provisions are set forth below:

"The extra-hazardous occupations and pursuits to which this act [59-10-1 to 59-10-37] are [is] applicable are as follows: Factories, mills and workshops where machinery is used; foundries, blast furnaces, mines, oil wells, gas works, natural gas plants, water-works, reduction works, breweries, elevators, dredges, smelters, power works, laundries operated by power, quarries, engineering works, logging, road building and construction, lumbering and saw mill operations, street railways, buildings being constructed, repaired, moved, or demolished; telephone, telegraph, electric light or power plants or lines, steam heating or power plants; bridge building, railroad construction work, but shall not include railroad construction work, of any character when done by the owner or operator of any railroad; and all employment wherein a process requiring the use of any dangerous explosive or inflammable materials is carried in; and each of which employments above names, including all employees of telephone and telegraph companies, is hereby determined to be extra-hazardous, in which, from the nature, conditions or means of prosecution of the work therein required risks to the life and limb of the workman engaged therein are inherent, necessary or substantially unavoidable. All duly elected or appointed peace officers of the state, counties or municipalities, and the warden and all guards employed at the state penitentiary shall be *{*102}* deemed to be following extra-hazardous occupations and to be within the provisions of this act. This act shall not apply in any case where the injury occurred before this act takes effect, and all rights which have accrued by reason of any such injury prior to the taking effect of this act shall be saved the remedies now existing therefor."

It is the opinion of this office that court employees are not included in enumerated occupations and therefore it is not necessary for the court to provide Workmen's Compensation Insurance for its employees unless the court voluntarily decides to carry such insurance.

By: Warren O. F. Harris

Assistant Attorney General